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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO. 1235 OF 2002

Suresh Ramchandra Jadhav ... Appellant
V/s
The State of Maharashtra ... Respondent

Mr. Niranjan Mundargi, advocate appointed for the appellant.

Mrs. R. M. Gadhvi, A.P.P. for the respondent State.

CORAM: D. G. DESHPANDE &
SMT. NISHITA MHATRE, JJ.

DATED: 29TH MARCH, 2007.

ORAL JUDGMENT (PER SMT. MHATRE, J.):

1. This appeal is directed against the judgment and order of the III Additional Sessions Judge, Satara, dated 29.8.2002. By this order, the accused/appellant has been convicted under Section 302 of the Indian Penal Code and sentenced to suffer imprisonment for life. He has also been directed to pay a fine of Rs.2000/-. The accused has been acquitted of the offences punishable under Section 498-A and Section 304-B of the Indian Penal Code.

2. The accused and Vaishali were married for about 7 or 8 months. According to the prosecution, the accused often demanded gold which had been promised to him at

the time of marriage by Vaishali's parents. On the night of 20.4.1999, the accused had an altercation with his parents about living separate from them. He also quarrelled with Vaishali since his demands for gold had not been met by her parents. The prosecution has alleged that, in the night intervening between 20.4.1999 and 21.4.1999, the accused doused his wife, Vaishali with kerosene and set her ablaze. She suffered 100% burn injuries. After a battle for survival for four days, she succumbed to her injuries on 24.4.1999. The accused was arrested on 27.4.1999. He was charged for having committed offences under Section 302, Sections 498-A and 304-B of the Indian Penal Code. The trial was committed to Sessions. The III Additional Sessions Judge, Satara has convicted the accused as aforesaid.

3. The prosecution has relied on the evidence of seven witnesses. Besides this evidence, the prosecution has also relied on the dying declarations which have been recorded by the police officer who has been examined as PW-6 and the Special Executive Magistrate who has been examined as PW-4. The dying declarations have been endorsed by the doctors who have been examined as PW-7 and PW-5, respectively. PW-1 is the panch witness who has proved the spot panchanama and PW-2 is the cousin of the victim's father. The victim has made an oral dying

declaration to this witness.

4. The dying declaration which was recorded first in point of time is at Exh.53. This statement was recorded between 8.00 and 8.40 am on 21.4.1999 i.e. soon after the victim was admitted to hospital. The victim has spoken about a quarrel between the accused and his parents on the night of 20.4.1999 regarding partitioning of the property. The victim has mentioned that the accused also quarrelled with her since his demand for gold had not been met. The victim has stated that the accused and she then went to sleep on the first floor of their house. According to the victim, the accused doused her with kerosene when she was sleeping. She awoke when she felt the kerosene on her body, at which point of time the accused threw a lighted matchstick on her and set her ablaze. This happened at approximately 4.30 am on 21.4.1999, according to the victim. She has stated that, she shouted out in pain and her father-in-law came to her aid. He extinguished the fire with water. He then took the victim to the Civil Hospital. This dying declaration has been endorsed by the medical officer who has been examined as PW-5. The doctor has ascertained about the mental condition of the victim before the statement was recorded. PW-5 has stated that all throughout the recording of the

statement, the victim was conscious and that the victim's thumb impression on the statement was taken in her presence. She has also stated that nobody, except the person recording the statement and police were present in the room while the statement was being recorded.

5. Another dying declaration which is at Exh.48 has been recorded by the Special Executive Magistrate. This statement of the victim has been recorded at about 11.40 am. It is consistent with the earlier statement. The Special Executive Magistrate who has been examined as PW-4 has deposed that he first ascertained from the doctor on duty whether the victim was in a position to have the statement recorded. He has stated that the relatives of the victim who were present when he entered the ward were asked to leave and it was only thereafter that he recorded the statement. According to this witness, the doctor PW-5 has endorsed the dying declaration made by the victim. The evidence of PW-4 has been corroborated by the testimony of PW-5. Thus, both the dying declarations have been recorded after ascertaining the mental condition of the victim and both the statements have been endorsed by the doctor PW-5. The dying declarations are consistent with each other and, therefore, we have no hesitation in accepting them.

6. Besides these two dying declarations, PW-2 has spoken about the victim disclosing to him the cause of the burn injuries suffered by her. He has stated that he had reached Satara on 21.4.1999 at about 5.40 am for some work. He was met at the bus stop by one Sunil Jadhav who informed him that Vaishali was burnt. When he reached her house, he found Vaishali sitting near the front door. Vaishali informed him that the accused had poured kerosene on her and set her ablaze with a lighted matchstick. She also told him that on the previous night the accused had quarrelled with his parents about partitioning the property and had also quarrelled with her since his demand for two tolas of gold was not met. Thus we have two dying declarations and a third oral dying declaration which are consistent with the story of the prosecution. There is no reason to disbelieve the statements of the victim and we, therefore, accept them.

7. Besides this, there is the evidence of the stepmother of the accused who has been examined as PW-3. She has corroborated the statements made by the victim in all material particulars. Therefore, in our opinion, the prosecution has proved that the victim met with a homicidal death and that the accused was responsible for her death.

8. Mr. Mundargi who has been appointed to appear for the accused submitted that the testimony of the Special Executive Magistrate i.e. of PW-4 throws a shadow of doubt on the dying declaration. According to the learned advocate, although the victim does not mention the quantity of gold in her statement, the Special Executive Magistrate has in his deposition stated that the victim, while narrating the incident, stated that her husband was harassing her constantly for two tolas of gold. In our opinion, this is not a very material inconsistency at all. The victim has stated that the motive for the accused for setting her ablaze was that she and her parents have not been able to fulfil their promise about paying two tolas of gold to the accused.

9. In our opinion, therefore, there is no need to disturb the findings arrived at by the Sessions Court. The Trial Court has marshalled the evidence before it properly and has drawn correct conclusions. On our independent assessment of the evidence on record we have arrived at the same conclusions.

10. Hence, appeal dismissed.

11. Fees of the learned advocate appointed for the

appellant/accused are quantified at Rs.1000/-.

(D.G. DESHPANDE, J.)

(SMT. NISHITA MHATRE, J.)